

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
AT DAYTON

----- )  
UNITED STATES OF AMERICA, )  
 )  
Plaintiff, ) CASE NO. 3:18-cr-186-TMR  
 )  
-vs- )  
 )  
BRIAN HIGGINS, ) MOTION TO CONTINUE  
 )  
Defendant. )  
----- )

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE **THOMAS M. ROSE**,  
UNITED STATES DISTRICT JUDGE, PRESIDING  
THURSDAY, FEBRUARY 6, 2020  
DAYTON, OH

**APPEARANCES:**

**For the Plaintiff:** **BRENT TABACCHI, ESQ.**  
U.S. Attorney's Office  
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Room 602  
Dayton, OH 45402

**For the Defendant:** **ANTHONY R. CICERO, ESQ.**  
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Proceedings recorded by mechanical stenography,  
transcript produced by computer.

**Mary A. Schweinhagen, RDR, CRR**  
Federal Official Court Reporter  
200 West Second Street  
Dayton, OH 45402

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01:58:59 1 P-R-O-C-E-E-D-I-N-G-S 1:59 P.M.

01:58:59 2 THE COURT: We're before the Court this afternoon in

01:59:03 3 the matter of the United States of America versus Brian

01:59:06 4 Higgins. This is Case Number 3-18-cr-186. And this matter

01:59:13 5 was previously set for a final pretrial. It's my

01:59:17 6 understanding, however, that there is a motion at this time to

01:59:21 7 be made before the Court.

01:59:24 8 Counsel -- first, let me have counsel enter their

01:59:27 9 appearance, please.

01:59:28 10 MR. TABACCHI: Good afternoon, Your Honor. Brent

01:59:30 11 Tabacchi on behalf of the United States.

01:59:31 12 MR. CICERO: Tony Cicero on behalf of Brian Higgins.

01:59:34 13 THE COURT: All right. Mr. Cicero.

01:59:36 14 MR. CICERO: As we discussed in chambers, Your

01:59:38 15 Honor, at this time we would move to continue this matter. I

01:59:40 16 will follow that up with a written motion that details a lot

01:59:45 17 of what we discussed in chambers and have that signed by my

01:59:48 18 client as well and file that on the Court's docket.

01:59:52 19 THE COURT: And I'm assuming, as indicated in

01:59:55 20 chambers, that the purpose for -- broadly or generally the

02:00:01 21 purpose for the continuance is the necessity of receiving,

02:00:06 22 analyzing, and making some determination with regard to the

02:00:09 23 discovery; is that right?

02:00:10 24 MR. CICERO: That's absolutely correct, Your Honor.

02:00:14 25 THE COURT: And, Mr. Cicero, you have talked with

02:00:18 1 Mr. Higgins. Mr. Higgins understands that this motion does  
02:00:23 2 waive or gives up or tolls any and all time requirements that  
02:00:31 3 are a requirement of this Court or the government to try  
02:00:34 4 Mr. Higgins within a certain period of time; namely, his  
02:00:37 5 speedy trial rights?

02:00:38 6 MR. CICERO: He understands that, Judge.

02:00:40 7 THE COURT: And he still wishes the Court to grant  
02:00:42 8 the continuance?

02:00:42 9 MR. CICERO: That's correct.

02:00:43 10 THE COURT: How about that, Mr. Higgins?

02:00:45 11 THE DEFENDANT: Yes, Your Honor.

02:00:45 12 THE COURT: You understand that everybody's entitled  
02:00:49 13 to be tried within a certain period of time, and that clock  
02:00:51 14 runs. One of the things that can stop that clock from running  
02:00:57 15 is a motion by the defendant to continue the matter.

02:01:00 16 THE DEFENDANT: Yes, Your Honor.

02:01:01 17 THE COURT: And if that matter is -- if I grant a  
02:01:03 18 motion to continue, from the date of the motion, which would  
02:01:06 19 be here today, because I'm first hearing of this by oral  
02:01:11 20 motion to be followed by a memorialization of that motion in  
02:01:15 21 writing and filed, but from today until the new trial date  
02:01:21 22 there would be no time counted against the government nor the  
02:01:25 23 Court with regard to any obligation to try you within a  
02:01:28 24 certain period of time.

02:01:29 25 THE DEFENDANT: Understood.

02:01:30 1 THE COURT: Understanding that, do you want the  
02:01:32 2 Court to grant the continuance?

02:01:34 3 THE DEFENDANT: Yes, Your Honor.

02:01:34 4 THE COURT: And you understand that that continuance  
02:01:38 5 would most likely be a considerable continuance? It would  
02:01:43 6 probably extend into the mid year.

02:01:45 7 THE DEFENDANT: Yes, Your Honor.

02:01:46 8 THE COURT: Thank you. You can have a seat.

02:01:48 9 Any objection from the government?

02:01:49 10 MR. TABACCHI: No, Your Honor.

02:01:50 11 THE COURT: Well, the Court finds that based upon  
02:01:54 12 the presentation of counsel, based upon my understanding of  
02:01:59 13 the motion that will be filed with the Court, there is a  
02:02:04 14 necessity in this particular case to allow further discovery,  
02:02:10 15 analysis, and preparation, and that the discovery is somewhat  
02:02:17 16 complex and additional time is needed to examine the discovery  
02:02:22 17 and analyze it and make a determination as to how to proceed.

02:02:26 18 The Court further finds that failure to grant the  
02:02:30 19 continuance as prayed for by Mr. Higgins through counsel would  
02:02:35 20 result in a miscarriage of justice and would deny counsel for  
02:02:39 21 the defendant reasonable time necessary for effective  
02:02:42 22 preparation.

02:02:43 23 So, therefore, within the factual and legal confines of  
02:02:47 24 this cause, the Court does find that the ends of justice in  
02:02:55 25 granting this motion outweighs the best interests of the

1 public and the defendant in a speedy trial. So, therefore,  
2 the Court is going to continue the matter from the previously  
3 set trial date, I believe it's February the 18th of 2020, and  
4 is reset for July the 27th, 2020, at 9 o'clock. This will  
5 toll any and all speedy trial from today until the July 27,  
6 2020, trial date.

7 The Court would not anticipate any reason at this point  
8 in time that would require this Court to continue this matter  
9 any further. This should give everybody an ample opportunity  
10 to do what they need to do and to be prepared to go to trial.

11 Final pretrial will then be set for July the 14th, 2020,  
12 at 2:30.

13 Anything further to come before the Court?

14 MR. TABACCHI: No, Your Honor.

15 MR. CICERO: Nothing else, Judge.

16 THE COURT: Thank you very much.

17 THE COURTROOM DEPUTY: All rise. This court stands  
18 in recess.

19 (Proceedings concluded at 2:04 p.m.)  
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## 1 CERTIFICATE OF REPORTER

2  
3 I, Mary A. Schweinhagen, Federal Official Realtime  
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12  
13 s/Mary A. Schweinhagen

14 \_\_\_\_\_ October 9, 2020

15 MARY A. SCHWEINHAGEN, RDR, CRR  
16 FEDERAL OFFICIAL COURT REPORTER  
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